SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S PORTFOLIO

Output: CSG

Question No. 1

Senator Carr asked the following question at the hearing on 14 February 2005:

Please provide a table listing details of all consultancies for the 2003/04 financial year, for the department and all associated agencies within the portfolio. Please include the following:

a) The cost for all completed consultancies, both budgeted and actual;

b) The cost for ongoing consultancies, both budgeted and for the current financial year;

c) The total costs for all consultancies, both the amount expended in the current financial year, and the total budgeted value of all consultancies running in the current financial year;

d) The nature and purpose of the consultancy;

e) The method by which the contract was let;

f) The name and details of the company and/or individual who is carrying out, or carried out, the contract.

The answer to the honourable senator's question is as follows:

By way of preliminary comment, Australian Government policy requires agencies that are subject to the *Financial Management and Accountability Act 1997* (FMA Act) to report all Commonwealth contracts and agency agreements, including standing offers, with an estimated liability (including GST where applicable) of $2,000 or more in the Gazette Publishing System (GaPS - now called AusTender), within six weeks of entering into the arrangement. The information recorded in AusTender includes a short description of each contract, the provider of the goods or services, the value of the contract and the selection process. Attorney-General's Department and portfolio agencies to which the FMA Act applies comply with this policy. Details of all consultancies with a contract value of $2,000 or more are therefore already publicly available, albeit not in a form that distinguishes consultancies from non-consultancy contracts.

Further, the annual reports of the Department and agencies subject to the FMA Act provide information about the number of consultancy contracts let in the financial year to which each report relates, and the total value of payments made to consultants each year, regardless of when the consultancy contract was let. Annual reports (and/or agency web sites) also list each consultancy contract let during the year with a value of $10,000 or more, and provide details of the consultant's identity, the purpose of the consultancy, the contract price and method of selection. The method of selection is usually by competitive tender except in specific circumstances whereby the Chief Executive or relevant delegate approves other methods (such as a collaborative approach with limited or single suppliers) to achieve the best overall value for money outcome.

Portfolio agencies which are subject to the *Commonwealth Authorities and Companies Act 1997* are not required to publish information about contracts in their annual reports or as part of AusTender.

The Attorney-General's Department considers that the preparation of answers to the questions placed on notice would involve a significant diversion of resources and provide information already on the public record. In the circumstances, the Department does not consider that the additional

work can be justified. The Department is ready to provide further information about any particular contract to which it is a party.

Portfolio agencies providing specific information are indicated below. The remaining portfolio agencies consider that the preparation of answers to the questions placed on notice would involve a significant diversion of resources and/or provide information already on the public record. In the circumstances, the agencies do not consider that the additional work can be justified. The agencies are ready to provide further information about any particular contract to which they are a party.

Australian Government Solicitor

The AGS is a statutory authority and government business enterprise operating on a fully commercial and competitive basis. From time to time, AGS engages consultants to undertake specific projects or activities, generally in the areas of corporate and business support. In 2003–04 AGS paid in the order of $365,000 for consultancy services. AGS considers that the preparation of answers to each of the questions on notice would represent a significant cost to AGS's business and would be an unreasonable diversion of AGS's resources.

Australian Law Reform Commission

The following consultants were engaged by the Australian Law Reform Commission in 2003–04:

Consultant	Budgeted Cost	Actual Cost (GST inclusive)	Nature and purpose of consultancy	Method by which the contract was let
HBA Consulting	There was no specific budget for this consultancy. It was part of the global budget for advice to the Commission on corporate matters.	$1,584	Industrial relations advice for enterprise bargaining.	Direct engagement.
Dixon Advisory Services	As above.	$400	Superannuation advice.	As above.
Ernst and Young	$6,000	$9,596	Development of a Fraud Control Plan.	Selected on the basis of written quotations.
Anier Pty Ltd	$25,000	$12,661	Review of information management and research services.	Direct engagement.
Working Technology Ltd	$40,000	$57,312	Information technology services and support.	Ongoing engagement.

Consultant	Budgeted Cost	Actual Cost (GST inclusive)	Nature and purpose of consultancy	Method by which the contract was let
Loane Skene	There was no specific budget for this consultancy. It was part of the global budget for advice to the Commission in relation to its reference on Gene Patenting and Human Health.	$2,440	Specialist advice on aspects of the reference.	Direct engagement.
Professor Margaret Otlowski, University of Tasmania	As above.	$1,220	As above.	As above.
Dr Dianne Nicol, University of Tasmania	As above.	$2,745	As above.	As above.
Professor Don Chalmers, University of Tasmania	As above	$3,050	As above.	As above.
Chris Pettigrew	As above.	$1,650	As above.	As above.

Federal Magistrates Court

The following consultants were engaged by the Federal Magistrates Court in 2003-04:

Consultant	Nature & purpose	Cost (GST inclusive)	Method let
iFocus Pty Ltd	Assistance with the court's Self Represented Litigants Project	$1,650	Direct engagement
Uniquest Pty Ltd	Evaluation of the court's Primary Dispute Resolution Program	$14,303	Direct engagement
Enterprise Outsouring Pty Ltd	Advice on procurement	$314	Direct engagement
Total		**$16,267**	

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 2

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Provide a short synopsis of where those recommendations (from the report on the review of the Federal Magistrates Court (FMC)) are at, and those that the government has responded to in some form and what form that constitutes.

The answer to the honourable senator's question is as follows:

The recommendations made by the FMC Review and responses to the recommendations are set out below.

Recommendation 1

> … that the issue of transfers be given further consideration, in consultation with the courts, in order to determine whether any improvements could be made to the existing transfer mechanisms, having regard to the intention that the FMS be a high volume, summary jurisdiction handling both shorter and easier matters

The proposed Family Law Amendment Bill, to be introduced in the week beginning 14 March 2005 makes provision for transfers in family law matters from State courts direct to the FMC (currently State courts can only transfer such matters to the Family Court). This will reduce double handling where a matter is transferred by a State court to the Family Court and by the Family Court to the FMC.

On 10 November 2004, the Government released a discussion paper - *A New Approach to the Family Law System* – outlining wide-ranging reforms to the family law system including a proposal to establish a new combined registry for the Family Court of Australia and the Federal Magistrates Court to deal with family law matters that are heard by those courts. A combined registry would channel cases to the appropriate court, thus generally obviating the need for transfers. The Government, in conjunction with the Family Court and FMC, is considering the submissions received in response to the discussion paper.

The Migration Litigation Reform Bill 2005, which was introduced on 10 March 2005, will not make any changes to the existing provisions in the *Federal Court of Australia Act 1976* and *Federal Magistrates Act 1999* in relation to the transfer of matters between the Federal Court and FMC. However, the Bill will significantly reduce the need for migration matters to be transferred from the Federal Court to the FMC as most will now commence in the FMC. This will reduce the judicial and registry time currently spent in the Federal Court on dealing with such transfers. Further, the proposed Bill provides that matters filed in the High Court's original jurisdiction will be remitted directly to the FMC (the current practice is for migration matters to be remitted to the Federal Court and then the Federal Court may transfer matters to the FMC).

The Federal Court continues to liaise with the FMC at the national and registry levels about the mechanisms for transferring matters between the courts in all areas of concurrent jurisdiction. These mechanisms are working well.

Recommendation 2

> …that the FMC be given jurisdiction to hear any civil matter remitted from the Family or Federal Courts.

This recommendation is under consideration by the Government.

Recommendation 3

> …that, after the Government's current proposals to give the FMC additional general federal law jurisdiction are implemented, consideration be given to the … proposal for it to have concurrent jurisdiction with lower level State courts in trade practices matters, including jurisdiction over unconscionable conduct and other unfair practices as well as consumer protection matters.

The FMC currently has jurisdiction in relation to unfair trade practices under Division 1 of Part V of the *Trade Practices Act 1974* (TPA) and product safety and information matters under Division 1A of Part V, with power to award damages up to a maximum of $200,000. In addition, the FMC can hear consumer protection matters in respect of non-financial services under Part V of the TPA.

The Government is proposing to extend the jurisdiction of the FMC under the TPA and to confer jurisdiction on the FMC in consumer protection matters in relation to financial services under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). An exposure draft of the Federal Magistrates Court Legislation Amendment Bill 2004 containing these amendments was released for public comment on 22 December 2004 on the Treasury Department's website.

In addition to providing for the conferral of jurisdiction on the FMC in relation to less complex corporate insolvency matters under the *Corporations Act 2001*, the exposure draft provides for:

- an increase in the monetary limit on damages that can be awarded by the FMC under Divisions 1 (unfair practices) and 1A (product safety and product information) of Part V of the TPA from $200,000 to $750,000

- conferral of jurisdiction on the FMC in any matter arising under Part VA of the TPA (Liability of manufacturers and importers for defective goods) in respect of which a civil proceeding is instituted by a person other than the Minister or the Australian Competition and Consumer Commission

- conferral of jurisdiction on the FMC in matters arising under Subdivision D, Division 2 of Part 2 of the ASIC Act, which deals with consumer claims in relation to financial services. The amendment will enable the FMC to hear consumer claims raising issues under both the TPA and the corresponding provisions of the ASIC Act

- conferral of jurisdiction on the FMC in matters arising under Part 3 of the ASIC Act (Investigations and information-gathering) in its application in relation to an investigation of a contravention of Subdivision D, Division 2 of Part 2, and

- a $750,000 monetary limit on awards of damages by the FMC under the consumer protection provisions of the ASIC Act.

The Government also proposes to give the FMC additional jurisdiction under Part IVA (unconscionable conduct) and Part IVB (industry codes) of the TPA as recommended by a report of

the Senate Economics References Committee, *The effectiveness of the Trade Practices Act 1974 in protecting small business*.

Recommendation 4

> …that the Government, when considering recommendation 3 and any other proposals to expand the [FMC's] jurisdiction, should consult with the Federal or Family Court as appropriate and other stakeholders.

The Government consults the courts in relation to all proposals for expansion of FMC jurisdiction. The Government will consult other stakeholders as appropriate.

Recommendation 5

> …that interim matters should continue generally to be handled by the court where the substantive matter is to be determined.

This recommendation reflects current practice. The issue is being considered by the Government and the courts in the context of considering the submissions received in response to the discussion paper mentioned in the response above on recommendation 1.

Recommendation 6

> ...that:
>
> (a) upon the resignation, retirement or death of any judicial officer, the need for a replacement appointment in the particular location where the judicial officer served, and whether any replacement should be at the level of a judge or federal magistrate, be examined
>
> (b) in relation to a potential judicial appointment, the national situation in the FMS and the relevant superior court be taken into account in order to ensure a replacement appointment is made in the area of greatest ongoing need
>
> (c) the relevant departments and the courts undertake further work on the methodology to be applied when replacement judicial appointments are in issue

In allocating judicial resources, the Government takes into account the national situation in both the FMC and relevant superior courts. The Government has implemented recommendations 6(a) and (b) and, in relation to recommendation 6(c), the Department has undertaken further work on the methodology since the Review and has consulted the courts on the methodology used.

Recommendation 7

> that:
>
> (a) the courts undertake further work to agree on an activity based costing methodology that will enable public costs between the courts to be determined and compared, and that this costing methodology be applied in future years; and
>
> (b) this methodology be reported to the Minister for Finance and Administration prior to the 2004-05 Budget process

The Family Court, Federal Court and FMC are working together to establish an agreed methodology and the courts are engaged in consultation with the Department of Finance and Administration on the methodology.

Recommendation 8

> …that the [FMC] conduct further surveys of legal practitioners using the [FMC] (of the kind conducted in 2001 and 2002) and that it consider including questions that would enable costs to clients to be calculated.

The FMC has advised that it surveyed the legal profession in 2004 about its services and costs and proposes to publish the results of the survey on its website.

Recommendation 9

> …that the courts collect comprehensive data about ADR programs to enable their effectiveness to be assessed.

According to information on the Family Court's 2004 client survey contained in the Court's 2003-2004 Annual Report, the target for client satisfaction with Court mediation processes is 75% and the client survey showed 54% satisfaction. The Report noted that this result may also reflect clients' dissatisfaction with mediation services provided to them before they went to court. However, the Court also noted that it would be using the survey data to review and inform its mediation practices.

The FMC has advised that its program of ADR referrals to community based organisations was evaluated in 2004. The evaluation was conducted by Communication Partners, the consulting arm of the Centre for Social Research in Communication at the University of Queensland. The evaluation report was received in July 2004 and is published on the FMC's website.

The central findings of the evaluation were that the program is well regarded and works well. Clients were generally satisfied that the service was appropriate for their needs. While clients were not always satisfied with the outcomes, they were generally satisfied with the process and believed that they were treated with respect.

The evaluation data was analysed to identify whether various demographic and matter-related variables could predict client satisfaction. None of the variables, other than settlement success, were statistically significant for predicting client satisfaction. The FMC's 2003-2004 Annual Report publishes data on settlement rates in its external referral program.

The Federal Court expects that its new case management system, *Casetrack*, will in due course provide more detailed reports on ADR.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 3

Senator Ludwig asked the following question at the hearing on 14 February 2005:

National Judicial College of Australia:

(a) Is the charge/ fee publicly available as to what the judges contribute to the course?

(b) Is the surcharge for the various States that do not contribute to the national scheme acting as a disincentive for judges from those States to attend those courses?

The answer to the honourable senator's question is as follows:

(a) The National Judicial College of Australia (NJCA) charges fees for its programs and the amounts of these fees are publicly available. The fees recover costs incurred in presenting programs, such as venue hire, presenter fees, printing and advertising, catering and administrative expenses. The fee varies according to the length of a program, the venue and number of presenters involved. To date the highest registration fee is $3,300 per person for the National Judicial Orientation Program (a week long residential program held annually in Sydney). To date the lowest fee is $490 per person for the Travelling Judicial Education Program (a one and a half day program held in various capital cities). Registration fees are usually paid by courts rather than individual judges and magistrates.

(b) Course attendees from States that do not contribute to the recurrent funding of the NJCA pay 10% higher fees. The NJCA does not believe that this surcharge is a disincentive for judicial officers from those States.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 4

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Please provide a breakdown of the $34.2million over four years for the appointment of eight additional magistrates to the Federal Magistrates Court

a) does this include the four magistrates who were appointed to the Court between January and March 2004?

The answer to the honourable senator's question is as follows:

The breakdown for the provision of $34.2 million over four years for the appointment of eight additional federal magistrates is as follows:

2004-05 $m	2005-06 $m	2006-07 $m	2007-08 $m	Total $m
10.6	7.7	7.9	8.0	34.2*

*The above figures exclude depreciation.

The provision of $10.6 million in the first year includes $4.2 million in capital for accommodation and fitout. The balance of funding in year one, and funding in the out years, provide for the salary of the eight additional federal magistrates, judicial support staff and associated court operating costs.

a) This does not include the four additional magistrates who were appointed to the Federal Magistrates Court between January and March 2004.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 5

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Regarding alternative dispute resolution, what progress has been made on the discussion paper on mediator accreditation?

- Why is this necessary? Are there current deficiencies on mediator accreditation?
- What is the current position on mediator accreditation?

The answer to the honourable senator's question is as follows:

In its March 2004 paper *Who says you're a mediator? Towards a national system for accrediting mediators*, the National Alternative Dispute Resolution Advisory Council (NADRAC) noted that there is currently no overall system for the accreditation of mediators in Australia and that there are a number of accreditation systems developed by a range of organisations which use different benchmarks or standards. While NADRAC noted there is little empirical data available, it considered that problems with the current situation may include inadequate standards of service and lack of consumer recourse for such service, lack of 'market' or referrer confidence in the quality of mediation services and difficulties for potential practitioners in gaining recognition of their skills.

The aim of the NADRAC paper was to obtain information and to stimulate discussion prior to a session on mediator accreditation to be facilitated by NADRAC at the 7th National Mediation Conference in Darwin. NADRAC received 32 submissions in response to the paper and it is estimated that over 200 people attended the workshop on 2 July 2004. On 30 June 2004, the Attorney-General, the Hon Philip Ruddock MP, announced a grant of $30,000 to National Mediation Conference Limited. The purpose of the grant is to enable further work to be undertaken, in consultation with relevant professional and industry groups and building on NADRAC's work, to develop national standards for mediator accreditation.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.2

Question No. 6

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Regarding the national legal profession model bill and advancing the general legislation: provide the expected date of completion; whether or not it is due this year; and, if you have a date for that, when do the states have to meet the obligations that are required so that a national legal profession can be implemented?

The answer to the honourable senator's question is as follows:

There is no formal date for implementation of a national legal profession.

Under the National Legal Profession Memorandum of Understanding, entered into by the Standing Committee of Attorneys-General in 2004, each State and Territory has agreed to use its best endeavours to introduce legislation that gives effect to the Model Bill as soon as practicable.

To date, New South Wales and Victoria have enacted legislation implementing the Model Bill and Queensland and Western Australia have enacted legislation implementing significant parts of the Model Bill. Further action to implement the Model Bill and Regulations in all States and Territories is expected to be substantially advanced during 2005.

In the meantime the Legal Profession Joint Working Group (which contains representatives from all Australian jurisdictions and the Law Council of Australia) is working on further amendments to the Model Bill. The majority of these amendments were identified during drafting of the *Legal Profession Act 2004* of NSW and Victoria.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.2

Question No. 7

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Breach of Legal Services Directions: Provide that level of detail in relation to the ACC and APRA cases. Particularly, if you can, include what the excess rate was.

The answer to the honourable senator's question is as follows:

Excess rate in the APRA matter

The Australian Government Solicitor (AGS), acting for the Australian Prudential Regulatory Authority (APRA), transferred a brief from a barrister with an approved rate of $3200 per day to a barrister whose approved rate was, at that time, $2800 per day. This second barrister was mistakenly briefed at the rate approved for the original counsel, although was only paid at the higher rate for one day.

Excess rates in the ACCC matter

This question has been understood as referring to a breach involving the ACCC (Australian Competition and Consumer Commission), rather than the ACC (Australian Crime Commission).

Senior and junior counsel, briefed by AGS in the one ACCC matter, were paid in excess of their approved daily rates. Under the Legal Services Directions, it is not permissible for a counsel's daily remuneration to exceed the approved daily rate, regardless of the number of hours worked. However, in this matter, AGS had mistakenly briefed the senior counsel on terms allowing for payment at the hourly rate to exceed the daily rate if sufficient hours were worked. In the case of the junior counsel, AGS had mistakenly used the senior counsel's brief as a precedent.

On a number of non-hearing days during the course of the proceeding, both senior and junior counsel, in accordance with their briefs, charged at hourly rates for an amount of work that in total on those days exceeded their daily rates. The resulting amounts charged by counsel in excess of their approved daily rates were $12,000 in the case of the senior counsel and $9879 in the case of the junior counsel.

Remedial action in relation to the APRA matter

On becoming aware of the matter, AGS considered the steps to be taken to ameliorate the breach and avoid any recurrence.

The instructing AGS lawyer had her attention drawn to the correct procedure that should have been followed, in particular, that the brief should have been returned to AGS from the original counsel and that a new backsheet marking the correct fee relevant to the second counsel should have been attached to the brief, before transferring it.

The Office of Legal Services Coordination (OLSC) published a note in the *OLSC Bulletin*, to provide guidance on how to avoid breaches of this kind.

Remedial Action in relation to the ACCC matter

The Directors of AGS offices were informed of the nature of the errors which arose in this matter. A number of steps have been taken within AGS, several of which are also relevant to the APRA matter.

AGS Directors reminded AGS employees of the need to ensure that briefs to counsel (including any backsheet to the brief which marks the counsel's fees) are prepared and approved in accordance with AGS's national professional standards and that they comply with the requirements of the Legal Service Directions.

Changes to AGS's IT based counsel engagement system are being considered with a view to automating the marking of counsel fees on counsel briefs at approved rates. We are advised that the development of a new AGS counsel engagement system will guide users to create a new brief each time and make it less likely that an AGS employee would mistakenly copy and paste a precedent in preparing a brief.

A review of AGS's national professional standard on the engagement of counsel is being undertaken to determine whether there is a need to clarify or refine specific aspects of the standard in the light of this matter.

The Department will also be preparing a guidance note alerting those who engage counsel on behalf of the Australian Government and relevant agencies of the need to avoid errors of this kind.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.2

Question No. 8

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Was the Attorney-General given advice as to whether he should or should not intervene in the *Ruhani* matter; on what ground was that put to him; and on what ground did he decide not to intervene in the *Ruhani* matter?

The answer to the honourable senator's question is as follows:

In *Ruhani v Director of Police* [2005] the High Court upheld the constitutional validity of the *Nauru (High Court Appeals) Act 1976*.

The Attorney-General decided not to intervene in these proceedings after considering the views of his Department, the Solicitor-General, the Australian Government Solicitor and other Commonwealth agencies having a policy interest in the matter.

The Attorney-General has indicated that his decision was made having regard to the Commonwealth's limited interest in the case, the scope for the parties to put the relevant arguments before the High Court and the Australian Government's reluctance to seek an outcome that might have forced the Government of Nauru to accept the High Court as a court of final appeal.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.2

Question No. 9

Senator Ludwig asked the following question at the hearing on 14 February 2005:

Regarding the Melbourne-Voyager case:

a) How many have been finalised in the sense of being a settlement?

b) Provide a breakdown to indicate which claims have been settled and which claims have been finalised in other ways.

c) Provide what the average cost to the Commonwealth of the settlement in respect of the Melbourne is, what the cost per action has been to date and then the total cost of the actions by the Commonwealth in terms of their legal spend.

The answer to the honourable senator's question is as follows:

The Department is advised by the Department of Defence as follows.

a) The response to the question can most usefully be provided by dividing the claims into four categories:

1. Claims immediately after the collision, by the dependants of deceased crew of HMAS Voyager (including deceased's estates) and one Defence civilian who had been on board the ship and by survivors from the ship. The Commonwealth settled 38 such claims. Of these, 3 were claims by or on behalf of surviving crew of *HMAS Voyager*.

2. Claims in the 1980s and 1990s, following the decisions of the High Court in 1982 in *Groves' Case*[1] and in 1990 in *Verwayen's Case*[2], mainly by survivors of *HMAS Voyager* and some *Voyager* dependants. A total of 68 claims were settled under a 1993 settlement scheme and 123 under a 1995 scheme. In addition, 17 claims were settled in context of litigation in which *HMAS Voyager* survivors sought common law damages.

3. Claims from 1995 to date, by crew on *HMAS Melbourne*. Of 199 claims, 66 have been 'settled'. That is, that the claim ceased on terms agreed by the Plaintiff and the Commonwealth. Sometimes such terms include consent judgment and related orders.

4. Claims since October 2004, by dependants most of whom received settlements from the Commonwealth in the 1960s, who are seeking either to re-open the 1965-66 settlements or claim common law damages for personal injuries. These claims commenced in 2004 and are at a very early stage. None have been settled.

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[1] *Groves v the Commonwealth* (1982) 150 CLR 113
[2] *The Commonwealth v Verwayen* (1990) 170 CLR 394

b) Please refer to the following table:

	Melbourne Claims	**Voyager Claims**
Settled	66	246
Discontinued	10	
Judgment	8	4
Dismissed	3	
Ongoing	112	
Total	**199**	**250**

c) Please refer to the following table:

HMAS Melbourne Claims	**No.**	**Amount of settlement or judgment [Average]**	**Plaintiff Costs [Average]**	**Commonwealth Costs [Average]**
Settled	66	$271,210	$95,504	$84,487
Discontinued	10	Nil	Not Known	$40,294
Judgment	8	$549,682	$959,197	$524,675
Dismissed	3	Nil	Not Known	Not Known
Ongoing	112			
Total	**199**			

The 'total cost of the actions in terms of the Commonwealth's legal spend' has been $10,701,157 for finalised HMAS Melbourne matters.

The figures in these tables include all judgments and do not differentiate between judgments wholly or partly in favour of the Commonwealth and judgments in favour (or partly in favour) of the plaintiffs.

The answers do not include the cost of pensions or other service-related assistance from the Commonwealth.

Judgment costs to the Commonwealth are based on a number of cases where costing data is considered to be reliable. In a number of earlier matters, it appears that Commonwealth costs were generally billed to a general account it is not possible to attribute specific costs against individual cases. In each category, averages have been drawn from reliable records based a sampling that was more than 50% of the total number of cases in that category.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Output 1.2

Question No. 10

Senator Ludwig asked the following question at the hearing on 14 February 2005:

(a) How many 78B matters have been before the High Court since 1996?

(b) In how many did the Attorney-General's Department intervene?

The answer to the honourable senator's question is as follows:

Section 78A of the *Judiciary Act 1903* provides, broadly, that Commonwealth, State and Territory Attorneys-General may intervene in proceedings before federal, State or Territory courts in which a constitutional issue is raised. The right of intervention is given to Attorneys-General personally. Section 78B provides that Attorneys-General are to be given notice of constitutional issues as they arise so that they may decide whether to intervene.

A search of relevant databases indicates that, as at 14 February 2005, 667 matters in which 78B notices were given to the Commonwealth Attorney-General had been before the High Court since 1 January 1996. Those included hearings before the full court, hearings before a single judge, applications for special leave to appeal from a lower court to the High Court and applications for removal of a matter from a lower court to the High Court.

The database searches indicate that, in the same period, the Commonwealth was involved in 159 constitutional matters before the High Court. That involvement covered matters in which the Attorney-General intervened and matters in which intervention was considered unnecessary because the Commonwealth or a Commonwealth Minister or body was already a party. In some of those matters the Commonwealth Attorney-General might not have been given a 78B notice because, for example, the Commonwealth was already a party.